Supreme Court of the United States

OCTOBER TERM, 1965

No. 291

UNITED STATES, APPELLANT

vs.

STANDARD OIL COMPANY

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA

INDEX

	Original	Print
Record from the United States District Court for the Middle District of Florida, Jacksonville Division		
Docket entries	A	1
Information	1	3
Defendant's motion to dismiss information	2	4
Stipulation	3	5
Order granting motion to dismiss and dismissing information	6	8
Notice of appeal to the Supreme Court of the United States	10	12
Clerk's certificates (omitted in printing)	11	13
Order noting probable jurisdiction	13	14

[fol. A]

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA, JACKSONVILLE DIVISION

No. 64-298-Cr-J.

THE UNITED STATES

vs.

STANDARD OIL COMPANY

For U. S.:

Wm. J. Hamilton, Jr.

For Defendant:

Richard H. Miller of Mahoney, Hadlow, Chambers & Adams.

Statistical Record

J.S. 2 mailed 10-26-64	Clerk
J.S. 3 mailed 3-26-65	Marshal
Violation Discharge gas into St. Johns River-Navigable waters	Docket fee
Title 33	
Sec. 407	

DOCKET ENTRIES

Date	
1964	
Oct. 26	Information Filed.
Nov. 25	Notice of Arraignment on Dec. 4, 1964 at 9:30 A. M.
Dec. 3	Motion to Dismiss Information by Deft.

Date		
1964		
Dec. 4	Arraigned and Plead Not Guilty	
Dec. 4	Continued to be set for Trial at a later date	WAM R-31
1965		
Feb. 11	Notice of Hearing on Pending Motions on Feb. 16, 1965 at 10:20 A. M.	
Feb. 15	Notice of Trial on Mar. 8, 1965 at 9:30 A. M.	
Feb. 16	Hearing on Defendant's Motion to Dismiss	BS
Mar. 8	Continued for Term in open court	BS
Mar. 24	Stipulation between Parties.	
Mar. 26	Order Granting Motion to Dismiss and Dismissing Information.	R-32 BS
Apr. 26	Notice of Appeal to the Supreme Court of the United States filed by United States	

[fol. B]

[Clerk's Certificate to foregoing paper omitted in printing]

[fol. 1]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

No. 64-298-Cr-J
(33 USC 407)

[File Endorsement Omitted]

[Title Omitted]

INFORMATION—Filed October 26, 1964

The United States Attorney charges:

COUNT ONE

That on or about November 21, 1963, at Jacksonville, in the Middle District of Florida, Standard Oil Company did discharge and deposit and did cause, suffer and procure to be discharged and deposited from and out of its oil discharge terminal at the Standard Oil docks, 3117 Talleyrand Avenue, refuse matter, that is, 100 octane aviation gasoline, into the St. Johns River, navigable waters of the United States; in violation of Title 33, United States Code, Section 407.

EDWARD F. BOARDMAN
United States Attorney

By /s/ William J. Hamilton, Jr.
Assistant United States Attorney

[fol. 2]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

No. 64-298-Cr-J
(33 USC 407)

[File Endorsement Omitted]

[Title Omitted]

MOTION TO DISMISS INFORMATION—filed December 3, 1964

The Defendant, STANDARD OIL COMPANY (INCORPORATED IN KENTUCKY), moves that the information be dismissed on the ground that it does not state facts sufficient to constitute an offense against the United States of America.

MAHONEY, HADLOW, CHAMBERS & ADAMS

By /s/ Earl B. Hadlow
Attorneys for Defendant
Post Office Box 4099
Jacksonville, Florida

[Certificate of service (omitted in printing)]

[fol. 3]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

No. 64-298-Cr-J

[File Endorsement Omitted]

[Title Omitted]

STIPULATION—filed March 24, 1965

The United States of America and Standard Oil Company, the defendant in the above-styled case, acting by and through their respective undersigned attorneys, do hereby stipulate and agree to the following facts, for the purposes and subject to the limitations hereinafter set forth:

1. On or about November 21, 1963, at Jacksonville, Florida, certain employees of Standard Oil Company did repair and clean a main, 8-inch line connecting one of its bulk storage tanks at its Tallyrand plant with dock facilities.

2. At the completion of the repairing, cleaning and airing-out of the line, employees of Standard Oil did refill the line with 100-octane aviation gasoline which was then stored in the bulk storage tank, and, because the main shut-off valve at the dockside end of the line had been accidentally left open, approximately 300 gallons of the described gasoline spilled out of the open valve, onto the dock, and thus into the St. Johns River, which constitutes navigable waters of the United States. The shut-off valve was closed immediately and the amount of the spill was not such to impede navigation, to damage property or to cause any fire or explosion.

[fol. 4] 3. Standard Oil immediately reported the matter to the City of Jacksonville Fire Department and to the United States Coast Guard. Thereafter Standard Oil Company was charged, by information, with a violation of

Title 33, United States Code, § 407, which states in part that:

> "It shall not be lawful to throw, discharge, or deposit, or cause, suffer or procure to be thrown, discharged or deposited . . . any refuse matter of any kind or description whatever . . . into any navigable water of the United States."

4. The 100-octane aviation gasoline which was accidentally discharged into the St. Johns River was undiluted, unspoiled and unadulterated, and spilled directly from Standard Oil Company's main storage tank and main delivery line running therefrom onto the docks and into the river. Such fuel was sound, valuable and usable material, in no way damaged or impaired in value prior to the unintentional spillage thereof from the open valve and into the navigable water.

5. The spilled gasoline was not salvaged by Standard Oil Company and was dissipated into the river by the current, and by fire hoses and boat wakes of the Jacksonville Fire Department and the United States Coast Guard.

6. It is agreed by and between the parties that this factual stipulation is submitted in this form for the sole and single purpose of assisting the Court in making a proper ruling in respect to and in disposition of the defendant's Motion to Dismiss Information heretofore filed in this cause. Both parties reserve the right to file another or supplemental stipulation of facts and to produce live testimony and exhibits in the event this cause proceeds to trial.

[fol.5] ISSUE

The issue before the Court, accordingly, is whether or not the United States of America has stated in its Information facts sufficient to constitute an offense against said United States of America, by alleging, in this regard, that Standard Oil Company did discharge "refuse matter" into navigable waters of the United States, which refuse matter consisted of "100-octane aviation gasoline."

Respectfully submitted by and on behalf of the parties hereto, at Jacksonville, Florida, this 23rd day of March, 1965.

EDWARD F. BOARDMAN
United States Attorney

/s/ William J. Hamilton, Jr.
Assistant United States Attorney
Attorney for the United States of America
407 Post Office Building
Jacksonville, Florida

MAHONEY, HADLOW, CHAMBERS & ADAMS

/s/ Earl B. Hadlow
Attorney for Defendant, Standard Oil Company
P. O. Box 4099
Jacksonville, Florida

[fol. 6]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

No. 64-298-Cr-J

[File Endorsement Omitted]

UNITED STATES OF AMERICA

vs.

STANDARD OIL COMPANY

ORDER GRANTING MOTION TO DISMISS AND DISMISSING INFORMATION—March 26, 1965

On a prior date the Defendant's Motion to Dismiss (filed December 3, 1964) was argued and submitted by counsel for the respective parties. Both government and defense counsel were agreeable to the Court's considering admitted facts in the disposition of the Motion to Dismiss. At the Court's suggestion, counsel agreed to submit a written stipulation of facts to be considered by the Court solely in connection with the Motion to Dismiss. The case was taken off the trial calendar for March 8 to permit this to be accomplished.

Formal Stipulation, dated March 23, 1965, was filed by counsel for the parties March 25, 1965, and is considered by the Court in disposing of the Motion to Dismiss. The crucial facts now made to appear, in addition to those alleged in the information, are these: By the accidental failure to close a shut-off valve controlling a line connecting the Defendant's bulk storage facilities at its Talleyrand plant, Jacksonville, with its dock facilities, about 300 gallons of 100-octane aviation gasoline was permitted to spill out of the open valve onto the Defend-
[fol. 7] ant's dock and from thence into the St. Johns River, which constitutes navigable waters of the United States. The shut-off valve was closed and the amount of spill was not such as to impede navigation, to damage

property, or to cause any fire or explosion. The gasoline so accidentally discharged into the river was undiluted, unspoiled and unadulterated. It was sound, valuable and usable material, in no way damaged or impaired in value prior to the unintentional spillage from the open valve and into the navigable waters. The gasoline was not salvaged and was dissipated into the river by the current thereof and by fire hoses and boat wakes of the Jacksonville Fire Department and the United States Coast Guard.

The Information here is brought under Title 33, U.S.C., Section 407, which states in part:

> "It shall not be lawful to throw, discharge, or deposit, or cause, suffer or procure to be thrown, discharged or deposited . . . . any refuse matter of any kind or description whatever . . . into any navigable water of the United States."

The information charges the offense in the statutory language, referring to the substance discharged into the river as "refuse matter". The critical question is whether or not this valuable and entirely usable material may be construed to fall into the description of "refuse matter". This is so since the admitted facts at the least show that the matter was "suffered" to be discharged.

The answer to this question seems to me to be found [fol. 8] in *U. S.* v. *The Delvalle*, 45 F.Supp. 746, decided by District (later Circuit) Judge Wayne Borah in the Eastern District of Louisiana of this Circuit June 24, 1942. There, as here, valuable and usable matter (fuel oil in The Delvalle) was accidentally discharged into navigable waters through the failure of a member of the ship's crew to completely close the shut-off valve.

Judge Borah's Conclusions of Law were short and are quoted herewith:

> "Conclusions of Law.
>
> "1. The statute in suit is a penal statute and must be strictly construed.
>
> 2. The word 'refuse' is used in the statute in its adjective sense. Webster's New International Dictionary, 2nd Edition, Unabridged, defines the ad-

jective, 'refuse', as follows: 'Refused; rejected; thrown aside or left as worthless or of no value; worthless; useless.'

3. The oil involved in this proceeding was not refused, rejected, or thrown aside or left as worthless or of no value. It was not worthless nor unless. The accidental discharge of valuable, usable oil, under the circumstances set forth, does not constitute a throwing, discharging, or depositing of refuse matter, and is not a violation of the statute. 33 U.S.C.A. §§ 407, 411 and 412.

4. The libel should be dismissed.

Let a decree be entered accordingly."

Other cases are cited, Second Circuit, which might require a different conclusion. They are: *The Colombo*, 42 F.2d 211, and *U. S.* v. *Ballard Oil Co. of Hartford, Inc.*, 195 F.2d 369. The Second Circuit said in the latter case:

"The spilled oil was certainly 'refuse matter'; it had escaped from the tank whither it could not be [fol. 9] reclaimed; and for all useful industrial purposes it had ceased to exist. The word, 'refuse', does not demand that the material must have been deliberately thrown away; it is satisfied by anything which has become waste, however useful it may earlier have been."

Since the question is open in this Circuit, I am constrained to follow Judge Borah's decision which to me seems sound and well reasoned, based as it is upon the dictionary definition of the term "refuse" not otherwise defined in the statute. This is especially so since we deal here with a penal statute which should be narrowly and strictly construed.

In consideration of the foregoing, it is

ORDERED that the Motion to Dismiss of the Defendant Standard Oil Company is granted and the Information is dismissed.

DONE AND ORDERED in Chambers at Jacksonville, Florida, this 26th day of March, 1965.

/s/ Bryan Simpson
Chief Judge, U. S. District Court

Copies mailed to:

EARL B. HADLOW, ESQ., P. O. Box 4099, Jacksonville, Florida, 32201, Attorney for Defendant.

UNITED STATES ATTORNEY, (AUSA Hamilton), 407 Post Office Building, Jacksonville, Florida.

[fol. 10]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

No 64-298-Cr-J

[File Endorsement Omitted]

UNITED STATES OF AMERICA, PLAINTIFF

v.

STANDARD OIL COMPANY, DEFENDANT

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—filed April 26, 1965

I. Notice is hereby given that the United States appeals to the Supreme Court of the United States from the order and judgment of March 26, 1965, dismissing the information which charged the defendant, Standard Oil Company, with a violation of 33 U.S.C. 407.

This appeal is taken pursuant to 18 U.S.C. 3731.

II. The Clerk will please prepare a transcript of the record in this case for transmission to the Clerk of the Supreme Court of the United States, and include therein the following:

1. Transcript of docket entries
2. Information
3. Motion to dismiss the information
4. Stipulation of facts to be considered by the Court in connection with the motion to dismiss
5. Order granting the motion to dismiss and dismissing the information
6. This notice of appeal

III. The following question is presented by this appeal:

Whether gasoline which was permitted to spill out into navigable waters of the United States constituted "refuse [fol. 11] matter" within the purview of 33 U.S.C. 407 prohibiting the discharge of any refuse matter of any kind or description into the navigable waters of the United States.

EDWARD F. BOARDMAN
United States Attorney

/s/ William J. Hamilton, Jr.
Assistant United States Attorney

Dated this 26th day of April 1965.

[Clerk's Certificates to foregoing paper and transcript omitted in printing.]

[fol. 12] • • •

[fol. 13]

SUPREME COURT OF THE UNITED STATES

No. 291, October Term, 1965

UNITED STATES, APPELLANT

v.

STANDARD OIL COMPANY

APPEAL from the United States District Court for the Middle District of Florida.

ORDER NOTING PROBABLE JURISDICTION—October 11, 1965

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is placed on the summary calendar.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1965 791032 289